YAP AMI & ANOR.

v.

TAN HUI PANG

HIGH COURT MALAYA, KOTA BHARU
MOHD. ZAHIR ISMAIL J
[CIVIL SUIT NO. 30 OF 1980]
1 JULY 1981

CIVIL PROCEDURE: *Damages - Fatal accidents - Loss of dependency - Liability, apportionments of - Whether there was any loss dependency.*

The plaintiffs as administrators of the estate of Chua Kim Long, deceased, who died as a result of a gun-shot wound during a boar hunting expedition claimed damages against the defendant for negligence on behalf of the dependants.

The liability was agreed at 70% against the defendant and 30% against the deceased and the following facts were also agreed:

(1) Special damages at RM1,370;

(2) The dependants were person as stated in paragraph 2 of the statement of claim;

(3) The deceased was 37 years of age at the time of his death and was drawing an income of RM1,450 p.m.;

(4) Loss of purchase was 15 years;

(5) The deceased before his death was an active partner in Syarikat Hock Seng Motor and was drawing RM1,450 per month .

(6) That loss of expectation of life was at RM4,000.

It was agreed that the deceased before his death drew a monthly income of RM1,450 from the partnership and upon his death this sum was paid to the plaintiffs. It was submitted for the plaintiffs that the partnership asset of the deceased should go to the estate and that loss of dependency should be based on the deceased's income from the partnership.

The issue before the court was, whether dependents incurred any loss of dependency.

Held:

[1] The dependants were not deprived of the income and were paid what was due to the deceased by the partnership firm.

[2] The dependants in this case fall within the category where the deceased's whole estate passes to the dependants and as such the plaintiffs' claim for dependency should fail as there is no pecuniary loss.

[3] The Court made an award for loss of expectation of life and special damages.

[Award of RM3,759 being the 70% liability of defendant. Agreed cost of RM1,000.]

Cases referred to:
Davies v. Powell Duffryn Collieries [1942] AC 601
Taylor v. O'Connor [1971] AC 115

For the plaintiffs - Foo Say Ghee
For the defendants - H.S. Lim

(Digest Form Only)

Also found at [1982] CLJ 159